

# IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM  
PC CIVIL APPEAL NUMBER 49 OF 2010

**ASHA MWINYIMVUA.....APPELLANT**

**VS**

**SALAMA ISSA MTAMBO.....RESPONDENT**

## JUDGMENT

Date of last Order: 08-07-2010  
Date of Judgment: 16-09-2010

**JUMA, J.:**

On 15-05-1989 Katende Simba was granted by the Kariakoo Primary Court-(Probate No. 50 of 1989-Mketo-PCM) the letters of administration of the estate of the late Nassor Simba. The Kariakoo Primary Court directed the administrator to pay appellant herein her  $\frac{1}{4}$  share of the estate of her deceased husband within 90,

*"..mwombaji Katende d/o Simba awe msimamizi wa mirathi ya marehemu Nassoro Simba ni warithi wa pekee wa mali hiyo mke wa marehemu apewe  $\frac{1}{4}$  ya mali yote baada ya kujulikana thamani yake ni kiasi gani magawanyo yatatolewa siku 90 baada ya hapa jina la marehemu Nassoro Simba lifutwe na liandikwe na mrithi wa nyumba hiyo Katende d/o Simba"*

By the time the administrator of the estate (Katende Simba) died in 1997 appellant had not been paid her share of the estate, but the administrator had already transferred the house subject of the

estate to her own name as evidenced by a transfer deed dated 14-04-1990.

Respondent herein (Salma Mtambo) was appointed by the Kariakoo Primary Court to take over the administration of the estate. On 6<sup>th</sup> May 2009 the issue of the distribution of the estate was taken back to the primary court for directions. This time around the primary court was requested to resolve differences amongst heirs on how to determine the value the house before granting the appellant her ¼ share to the estate of her deceased husband. Appellant requested the primary court to order the value be pegged on prevailing market value. Respondent (administrator of the estate) prayed for valuation by the Government Valuer. The presiding primary court magistrate (D. Moshi-RM) directed the Government Valuer to conduct the valuation before distribution of the estate.

Appellant was not happy with the decision to rely on the Government Valuer. She appealed to the District Court of Ilala in Misc Civil Application No. 16 of 2009 challenging the order of the Kariakoo Primary Court directing that the value of the house situated at Ukami Street on Plot Number 47, Block 70 Kariakoo be determined by a Government Valuer and not the prevailing market price. The appellate District Court of Ilala (J. Kinyange-RM) in his decision dated 7<sup>th</sup> January 2010 was of the opinion that the Government Valuer should determine the value of the property at issue before giving the appellant her ¼ of the share. Still

aggrieved, appellant preferred further appeal to this court on the following grounds,

- i) The appellate magistrate erred in holding that the main issue in this matter is the mode of getting the exact value of the disputed property instead of obtaining the appropriate and just value of the said property.
- ii) The appellate magistrate erred in holding that parties and other heirs to the disputed property did not intend to sell the said property.
- iii) The appellate magistrate ought to have held that the current market value of the disputed property is shillings Eight hundred million (800,000,000/=).
- iv) The appellate magistrate erred in insisting that the valuation of the disputed property be conducted by government valuer after admitting and holding that reports from government valuers normally provide lower property values than market prices.

On the first day of hearing of this appeal appellant was represented by Prof. Safari and respondent was represented by Mr. Magafu. The two learned Counsels requested and this court agreed that hearing of the appeal be by way of written submissions. Both Counsels filed their respective submissions within their respective prescribed schedules.

On behalf of the appellant Prof. Safari has submitted that the appellate District Court should have ordered the primary court to

obtain appropriate and just value of the estate instead of ordering the Government Valuer to get the exact value of the estate. According to the learned Advocate, every seller of any property hopes to get the highest possible price. Prof. Safari in addition warned of the dangers of unscrupulous administrators of the estate who invariably favour Government Valuation in order to deprive the beneficiaries of the estate real and just share of the inheritance. In the opinion of Prof. Safari, appropriate and just value of the estate can only be obtained from the prevailing market price but not exact value to be determined by the report of the Government Valuer.

In a pointed response citing a Court of Appeal decision in **Attorney General Vs Sisi Enterprises Ltd, Civil Appeal Number 30 of 2004**; Crax Law Partners (Advocate) submitted on behalf of the respondent that appellant's first ground of appeal requesting appropriate and just market value has no merit. The learned Advocates submitted that in the case of **Attorney General Vs Sisi Enterprises Ltd (supra)**, the Court of Appeal expressed a view that between the Government Valuer and a report by a private valuer, the Court of Appeal trusted the report compiled the Government Valuer. Applying the Court of Appeal decision on this appeal, the Advocates for the respondent assert that the primary court was right to order the valuation of the estate to be conducted by the Government Valuer all for the sake of transparency of transaction. Further, the learned Advocates brushed aside as *obiter dictum* the observation by the District Court that practice has shown that

reports of Government Valuer are invariably lower when compared to value of property prevailing in the open market.

I have considered the rival submissions ably articulated by the opposing learned Advocates on the issue whether the trial primary court and the appellate District Court erred in insisting that the valuation of the disputed property be conducted by Government Valuer. I have also taken into account the fact that the appellant has for the last 21 years been waiting for her  $\frac{1}{4}$  share of the estate of her deceased husband. I have further take note that during these 21 years, the house at issue was for unexplained reasons transferred to the administrator of the estate (Katende Simba).

I should perhaps begin with the question whether the Court of Appeal decision in **Attorney General Vs Sisi Enterprises Ltd (supra)** cited in support of reliance on valuation by Government Valuer is a binding authority on facts leading up to the present appeal. There are two basic reasons why in my opinion the Court of Appeal decision in **Attorney General Vs Sisi Enterprises Ltd (supra)** is distinguishable from the facts leading up to this appeal before me. First, in the cited Court of Appeal decision the Government of Tanzania had intended to acquire the land under S. 4 of the **Land Acquisition Act, 1967** which is not similar to the matter between private persons *inter se* pertaining to the distribution of estate of the deceased pending in the Kariakoo Primary Court-(Probate No. 50 of 1989). Second, the Court of Appeal in **Attorney General Vs Sisi Enterprises Ltd (supra)** had before it two sets of valuations

when it was called upon to select between valuation that was prepared by a Government Valuer and another by a private valuer. Confirmation that the Court of Appeal in its decision compared two opposing valuation reports is evident on pages 13 and 14 of the judgment in **Attorney General Vs Sisi Enterprises Ltd (supra)**,

*"...much as we respect the report, we are of the view that justice will demand that we trust more the value given by the Government valuer than that of the private valuer. In this context, the value of Tshs.998, 467,000/= given by the Government valuer, DW2 Deodatus Kalyanda, will be fair and adequate compensation to the respondent. We further think that this will be fair compensation given the fact that the unexhausted improvements were on a prime area of the city."*

The Kariakoo Primary Court-(Probate No. 50 of 1989) in my opinion should have allowed opposing valuations to be presented before it instead of directing the compilation of the report only by a Government Valuer. Since the appellant has a vested interest in the value of the estate of her deceased husband it is prudent in the circumstances of this appeal to let not only the Government Valuer to conduct valuation of the property at issue, but to also allow valuations by any other "qualified valuer" as defined by section 2 of the **Land Act, Cap 113**. Section defines a "qualified valuer" to mean,

*a valuer with a professional or academic qualification in land valuation or with a professional or academic qualification in a subject that includes land valuation.*

Appellant's fear that the valuation by the Government Valuer may be detrimental to the size of her ¼ share of the estate should be addressed by


the primary court. This fear is reinforced by the fact that she is old and has waited for over two decades for her share to materialize. During this long wait the property at issue was even transferred to the name of the administrator.

From the foregoing, I hereby find and hold that the Primary Court erred when it ordered the valuation of the disputed property to be conducted only by the Government Valuer without giving room to the appellant to bring reports of other qualified valuers for consideration by the trial primary court.

In the upshot this appeal is allowed and the Kariakoo Primary Court-(Probate No. 50 of 1989) is hereby directed:


- (i) to consider both the valuation by the Government Valuer and also other valuations conducted by any other qualified valuer the appellant may wish to bring for the consideration by the Primary Court; and
- (ii) to order the respondent administrator of the estate of the late Nassoro Simba to pay the appellant her  $\frac{1}{4}$  share of the estate of her deceased husband within 90-days of the decision of the primary court on valuation method it selected.

No order is made with respect to costs.

  
I.H. Juma  
JUDGE  
16-09-2010

**Delivered:**

For applicant:	Prof Safari-Adv.
For respondent:	Absent

  
I.H. Juma, JUDGE  
16-09-2010

